IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3532 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUPITER DYECHEM

Versus

GENERAL MANAGER CUM JOINT INDUSTRIES COMMISSIONER

Appearance:

1. Special Civil Application No. 3532 of 1990
MR PARESH M DAVE for Petitioner No. 1-2
MR SIRAJ GORI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 31/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the order dated 30.3.1990 passed by respondent No.1 - General Manager-cum-Joint Industries Commissioner, District Industries Centre, Ahmedabad (Annexure 'G') by which the first respondent reiterated the Government decision dated 1.11.1985 to grant sales tax exemption only to the extent of 25% of the amount invested instead of 50% admissible to industries set up in specified areas.

2. Petitioner No.1, a partnership firm (hereinafter referred to as "the petitioner") had set up an industry in a specified backward area at village Lodariyal in Ahmedabad District. The petitioner applied for the benefit of Sales Tax exemption under the State Government notification dated 5.2.1981. The District Industries Centre granted certificate dated 11.5.1984 certifying that the petitioner had commenced the industrial unit at village Lodariyal on 21.9.1981 and that village Lodariyal is at a distance of 32 Kms. from the municipal limits of Ahmedabad City and that the petitioner had made investment of Rs.5,10,027/-. However, the certificate stipulated that the petitioner will get sales tax exemption to the tune of Rs.1,27,506/- (25% of the investment - Rs.5,10,027/-) for the period from 11.4.1983 to 31.3.1990.

On the basis of the aforesaid notification dated 5.2.1981 and the facts certified in the eligibility certificate, the petitioner claimed sales tax exemption at 50% of the invested amount and availed the same under the notification dated 5.2.1981 (Annexure A to the petition). However, by Government Resolution dated 15.6.2002, the State Government took the view that the industries commissioned after 15.6.2002 were entitled to sales tax exemption only to the extent of 25% of the investment made and not to the extent of 50%. Since the eligibility certificate issued by the Industries Commissioner was effective from 11.4.1983, the respondent authorities took the view that the petitioner was entitled to exemption to the extent of only 25% of the investment. The petitioner, therefore, made several representations which came to be turned down by the impugned decision dated 30.3.1990 (Annexure 'G') and hence this petition.

3. It appears that since the petitioner had already availed of sales tax exemption to the extent of 50% of the investment made by the petitioner and the State

Government was seeking to make recovery of 1/2 of the amount i.e., by confining the sale tax exemption to the extent of only 25% of the investment made, the petitioner prayed for interim relief and by order dated December 24, 1990, this Court granted interim relief in favour of the petitioner restraining the respondent authorities from making any recovery subject to the condition that in the event the petition fails and if recovery is to be made, such recovery will be made from the petitioner with interest accruing thereon at 24% per annum.

4. In response to the rule issued by this Court, affidavit in reply has been filed by the Joint Commissioner of Industries, District Industries Centre, Ahmedabad, taking the following stand:

> The Government had issued letter dated 16.5.1983 that the units which had taken effective steps prior to 15.6.1982 would be entitled to sales tax exemption at full rate (i.e., 50% of the investment) and in case the unit was commissioned after 15.6.1982 the instructions issued by Government Resolution dated 15.6.1982 are to be applied, that is, sales tax exemption will be given to the extent of only 25% of the investment made.

Reliance is placed on the Government resolution dated 15.6.1982 and Government letter dated 16.5.1983.

It is the contention of the respondents that the petitioner had not fulfilled the conditions laid down in the above resolution/letter and therefore the petitioner was not entitled to sales tax exemption at the full rate.

5. At the hearing of the petition, Mr. Paresh Dave, learned counsel for the petitioners, has submitted that the petitioner was fulfilling all the criteria laid down by the Government notification dated 5.2.1981 (Annexure A to the petition). It was a notification under Section 49 of the Gujarat Sales Tax Act, 1969 and therefore the respondents had no authority to curtail the benefits available to the petitioner under the said notification by imposing any further condition through any executive instructions or letter. Without prejudice to the aforesaid submission, it is also submitted that since the District Industries Centre had already issued eligibility certificate dated 11.5.1984 certifying that the petitioner had commenced its industrial unit at village Lodariyal from 21.9.1981, the petitioner's case was even otherwise covered by the Government Resolution dated

15.6.1982.

6. In reply Mr. Gori, learned AGP, has opposed the petition and reiterated the averments and submissions made in the reply affidavit.

7. Having heard the learned counsel for the parties and having perused the relevant Government notification dated 5.2.1981 (Annexure A to the petition) and the Government letter dated 16.5.1983 read with the Government Resolution dated 15.6.1982 produced by the respondents alongwith the reply affidavit, we are of the view that when the notification dated 5.2.1981 prescribed three conditions and the petitioner fulfilled all the three conditions, the respondents were not justified in curtailing the incentives available to the petitioner in the form of sale tax exemption. The notification prescribed the following three conditions:

(i) The industry is located 24 Kms., away from the City of Ahmedabad and in a notified growth centre;

(ii) The industry has been commissioned between 1.6.1980 and 31.5.1985;

(iii) General Manager of the concerned District Industries Centre issues a certificate certifying the above facts.

There is no dispute about the assertion made by the petitioner that village Lodariyal is at a distance of more than 24 Kms (in fact 32 Kms.) from the municipal limits of Ahmedabad City and that it is in one of the designated areas or growth centres as specified in the notification.

8. The only controversy is whether the petitioner's industrial unit was commissioned between 1.6.1980 and 15.6.1982 or between 16.6.1982 and 31.5.1985. It is in this context that the learned counsel for the petitioner has submitted that the benefits granted by the statutory notification dated 5.2.1981 cannot be curtailed by any executive instructions imposing additional conditions. It is, however, not necessary to go into this controversy for the simple reason that the eligibility certificate issued by the District Industries Centre, Ahmedabad District dated 11.5.1984 clearly certified that the petitioner's industrial unit had been commissioned on 21.9.1981 on which date the petitioner had commenced commercial production and that the petitioner had also

obtained sales tax registration under the Gujarat Sales Tax Act on 16.2.1982.

9. Mr. Gori, learned AGP, has however submitted that since the petitioner's application for exemption was received on 15.6.1983 and the exemption was granted with effect from 11.4.1983, the authorities are justified in taking the stand that the industry had been commissioned after 15.6.1982.

10. Apropos the above submission, there is nothing in the notification dated 5.2.1981, the Resolution dated 15.6.1982 or in the Government letter dated 16.5.1983 that the application for sales tax exemption should have been made before 15.6.1982. All that the Government letter dated 16.5.1983 read with Government Resolution dated 15.6.1982 provided was that effective steps should have been taken by the industry before 15.6.1982.

The following were laid down as the criteria for determining whether effective steps were taken:-

(i) At least 90% of the promoter's contributions have been spent;
(ii) Firm orders for machinery have been placed;
(iii) Loan has been sanctioned by financial institutions (in case the unit has obtained a loan);
(iv) The unit is in possession of land.

The General Manager of the District Industries Centre had certified that the unit had commenced production on 21.9.1981 and eligibility certificate dated 11.5.1984 certified that the unit had commenced commercial production on 21.9.1981. Commercial production from 21.9.1981 would not have been possible without the above conditions having been fulfilled before 15.6.1982.

In view of the above factual position, the respondents were not justified in denying the petitioner the incentive of sales tax exemption at full rate i.e., 50% of the investment made by the petitioner.

11. The petition is accordingly allowed and the communication dated 30.3.1990 and the Government decision referred to therein and the stipulation in certificate dated 11.5.1984 (Annexure 'B') in so far as it restricts the benefit under the scheme only to the extent of 25% of the investment made by the petitioner are quashed and set aside. The respondents are restrained from making any

recovery from the petitioners on the basis of the said communication dated 30.3.1990 and the respondents shall proceed on the basis that the petitioners were entitled to get the incentive of sales tax exemption under the Government notification dated 5.2.1981 (Annexure 'A') at full rate, i.e., 50% of the investment made by the petitioner.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

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